IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

R.S.A. No.3042 of 2006
Date of decision: January 23,2007

Lilu Singh and others V. Haryana State and others

CORAM: HON'BLE MR.JUSTICE VINEY MITTAL

Present: Shri Surya Parkash,Advocate, for the appellants.
Shri Ashok Jindal, Additional Advocate General, Haryana.

Viney Mittal,J.

The plaintiffs having lost concurrently before the two courts below are in second appeal before this court.

A suit for declaration was filed by the plaintiffs claiming that forefathers of the plaintiffs and private defendants were owners in possession of land bearing Khasra No.68 measuring 171 kanals 13 marals and Khasra No. 67 measuring 140 kanals 15 marlas. Land of Khasra No.67 had been acquired by the State for construction of canal from the forefathers of the plaintiffs and proforma defendants. The State had also taken land bearing Khasra No.68 measuring 171 kanals 13 marlas for installation of a brick kiln for using bricks in the construction of Bhakra Canal and it was agreed between the parties that after the completion of construction of Bhakra Canal, land bearing khasra No.68 measuring 171 kanals 13 marlas shall be returned back to the owners. According to the plaintiffs a mutation No.388 was entered in the name of Provincial Government with regard to Khasra No.67 on the basis of notification dated April 21,1954. However, the plaintiffs alleged that merely on taking of possession of the land of Khasra No.68 the aforesaid mutation was also illegally entered in the name of Provincial Government,

although at no point of time land of Khasra No.68 had ever been acquired nor the compensation for the same had ever been paid to the owners(forefathers of the plaintiffs and proforma defendants). The plaintiff alleged that after aforesaid land of Khasra No.68 had been reverted back, on completion of the canal, they had remained in possession thereof and were cultivating the same. On that basis the plaintiffs claimed a declaration, as noticed above, with a further declaration that mutation of Khasra No.68 in the name of Provincial Government be declared illegal, null and void and not binding upon the plaintiffs.

The suit filed by the plaintiffs was contested by defendants No.1 to 3 (State of Haryana and its officers). It was claimed that the suit land comprised in Khasra No.68 measuring 171 kanals 13 marlas had been acquired in 1954 by the Provincial Government of Punjab (now Haryana)for setting up of a brick kiln for lining of Bhakra Canal and no agreement at any point of time had ever been executed between the owners and the defendants that the land in question would be reverted back. The aforesaid defendants claimed that after the acquisition, the State is the owner of the suit land. The said land was leased out to different persons since 1972-73 upto 1985-86 regularly by the Department. The defendants also maintained that plaintiffs were never in possession of the suit land after its acquisition. The land in question came into unauthorised possession of Sadhu Ram, Ram Parkash etc. upto April 30,1998. Proceeding under Public Premises Act were initiated against the aforesaid persons and an order of eviction was passed by the Collector,Tohana. It was specifically pleaded that the plaintiffs are in unauthorised possession since May 19,1998 on account of their forcible possession, which had been taken by them from Sadhu Ram

etc. It was also pleaded by the defendants that plaintiffs have no concern with the suit land and the compensation for the acquisition has been duly paid to the erstwhile owners at the time when the land was acquired.

Learned trial Court, on appreciation of evidence led by the parties, held that plaintiffs had failed to prove that they are legal representatives of persons, who were owners of land bearing Khasras No.67 and 68. The trial court also relied upon affidavit Ex.P2/A filed by Prem Sagar, one of the plaintiffs, to hold that plaintiffs had come into possession of the suit land in the year 1998 and before that Pannu Ram,Gula Bai etc. were in possession of the land. Learned trial court also held that plaintiffs, on their own showing, had stepped into the shoes of Pannu Ram etc. whereas the title of aforesaid Pannu Ram etc., itself was disputed. On the basis of the aforesaid findings, the trial court held that the plaintiffs had failed to prove that they are owners of the suit land. Consequently, the suit filed by the plaintiffs was dismissed by the trial court.

The matter was taken up in appeal. Learned first appellate court reappraised the evidence It relied upon notification Ex.D1 and copy of receipt of compensation E.D2 and list of Musawi Kistwar Ex.P3 and various other documents on the record. On the basis of documentary evidence, the appellate court came to the conclusion that the land in question of Khasras No.67 and 68, at the time of acquisition, was part and parcel of land owned by Mushtarka Malkan. The appellate Court also relied upon the scheme of utilisation of land Ex.PW1/A and came to the conclusion that when the suit land was acquired, then with regard to Khasra No.67 the compensation was to be paid to Gram Panchayat whereas

compensation regarding suit land measuring 171 kanals 13 marlas was to be paid to the allottees and the custodial department in the common pool. The appellate court also come to the conclusion that as per various notifications available on the record, the land in question had been duly acquired. The appellate court also relied upon Musawi Kisthwar for the year 1952-53, Ex.D3, and Khatuni Ishtemal Ex.PW1/B to hold that since no other land was ever acquired in the village, therefore, the documentary evidence revealed that it was the suit land which had been duly acquired.

A further reliance was placed by the appellate court on the order of the Collector Ex.D4, to hold that an eviction petition had been passed against Sadhu Ram, Ram Parkash etc, who had come in illegal possession of the suit land and even the Collector had held that the land in question was mushtarka land which had been acquired for construction of brick kiln and after the closer of the brick kiln, the land had been made cultivable and had been illegally occupied. A specific reliance was placed upon the eviction order Ex.D6, whereby it was noticed that the plaintiffs had taken the possession of the suit land from Sadhu Ram etc. against whom an earlier ejectment order had been passed and even an ejectment order (Ex.D6) had been passed against the plaintiffs.

On the strength of the aforesaid findings, the appeal filed by the plaintiffs was also dismissed by the appellate court.

I have heard Shri Surya Parkash, learned counsel appearing for the plaintiff-appellants and Shri Ashok Jindal, learned Additional Advocate General, Haryana appearing for the contesting respondents and with their assistance have also gone through the record of the case.

Shri Surya Parkash,learned counsel appearing for the

plaintiff-appellants has vehemently argued that no evidence whatsoever has ever been led by the defendants, to show that the land in question at any point of time had been acquired. Learned counsel further contends that the defendants have also failed to produce evidence to show that compensation for the acquired land had been paid to the erstwhile owners. Learned counsel has contended that at the time of issuance of the notification for acquisition, almost simultaneously, consolidation proceedings had also been initiated in the village and,therefore the acquisition proceedings qua the acquisition of Khasra No.68 were never completed. Learned counsel has also placed reliance upon a judgment of Apex Court in the case of Hindustan Petroleum Corpn. Ltd V. Darius Shapur Chenai and others (2005)7 Supreme Court Cases 627 to contend that if the proceedings of acquisition are not completed in accordance with law, then entire acquisition proceedings are vitiated.

On the other hand, Shri Ashok Jindal, learned Additional Advocate General, has with equal vehemence, defended the findings recorded by the courts below. Shri Jindal has argued that the plaintiffs have failed to prove their ownership of the suit land in any manner and the evidence led by the defendants is sufficient to come to the conclusion that the land in question comprised in Khasra No.68 had been duly acquired and compensation had been paid to the erstwhile owners. Shri Jindal has also referred to various orders of eviction passed by the Collector against the unauthorised persons, including the plaintiffs.

Taking into consideration the rival contentions of the learned counsel for the parties, I am satisfied that there is no merit in the present appeal.

It is well settled that the plaintiff has to stand on his own legs and has to prove his claim by leading cogent evidence and cannot take advantage of any weakness of the case set up by the defendants. In these circumstances, it was for the plaintiffs to prove that they are owners of the suit land. The plaintiffs have miserably failed to prove the aforesaid fact.

The first appellate Court on the basis of detailed examination of the entire evidence on the record has come to a firm finding of fact that plaintiffs or their forefathers were not the owners of the suit land. The land in question vested in Mushtarka Malkan. The said land had been duly acquired. Compensation for the same had been paid. It was only after the closure of the brick kiln, which had been set up for the bricks for lining of the canal, that certain persons had taken unauthorised possession of the same. In proceedings taken under the Public Premises Act, eviction orders were passed against the unauthorised occupants. An eviction order Ex.D6 had been passed against the plaintiffs also. It is clear that faced with the aforesaid eviction order, the plaintiffs are now trying to perpetuate their illegal possession by taking recourse to the proceedings in the present suit. Once it is held that the land in question had been acquired, the ruling relied upon by the learned counsel for the appellants is not even relevant.

No other point has been urged.

In view of the aforesaid discussion, I do not find any merit in the present appeal. The same is dismissed.

Before parting with this order, it may be noticed that while issuing notice of motion, on August 7,2006, this court had directed the plaintiffs to deposit a sum of Rs.1,00,000/-, to be paid as costs in case the plea raised by the plaintiff-appellants was found to

be incorrect.

However, keeping in view the facts and circumstances of the case, I direct that the aforesaid amount of Rs.1,00,000/- would be refunded back to the appellants through their counsel.

January 23,2007 (Viney Mittal)
sks Judge